National Labor Relations Board

Weekly Summary of NLRB Cases

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CASES SUMMARIZED
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Accubuilt, Inc. (8-RC-16511; 340 NLRB No. 161) Lima, OH Dec. 31, 2003. The Board, finding no merit to the Employer's exceptions to the hearing officer's disposition of its objections, certified the Auto Workers (Petitioner) as the exclusive collective-bargaining representative of the employees in the appropriate unit. The tally of ballots showed 78 votes for and 74 against, the Petitioner. [HTML] [PDF]

The Employer argued that several prounion employees made election-related threats against coworkers during the election campaign. The hearing officer found that three of the four threats potentially affected only three employees and were not disseminated to any additional bargaining-unit employees and therefore, were insufficient, either separately or in the aggregate, to warrant setting aside the election. The Board agreed, saying that the four alleged threats known to no more than three employees in a unit of over 150, did not create a general atmosphere of fear and reprisal. It wrote that in determining whether a threat is serious and likely to intimidate prospective voters to cast their ballots in a particular manner:

> the Board evaluates not only the nature of the threat itself, but also whether the threat encompassed the entire bargaining unit; whether reports of the threat were disseminated widely within the unit; whether the person making the threat was capable of carrying it out, and whether it is likely that the employees acted in fear of his capability of carrying out the threat; and whether the threat was "rejuvenated" at or near the time of the election.

The Board noted that the Employer did not except to the hearing officer's conclusion that none of the conduct raised by the Employer can be attributed to the Petitioner or its agents.

(Chairman Battista and Members Liebman, Schaumber, and Walsh participated.)

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CAB Associates (29-CA-24331; 340 NLRB No. 171) College Point, NY Dec. 31, 2003. The Board affirmed the administrative law judge's finding that the Respondent violated Section 8(a)(5) and (1) of the Act by withdrawing recognition from Teamsters Local 282 and by refusing to adhere to the terms of a collective-bargaining agreement effective July 1, 1999, through June 30, 2002, between the Union and the General Contractors' Association of New York, Inc. (GCA). [HTML] [PDF]

The Respondent contended that the complaint was untimely under Section 10(b) of the Act. The Board agreed with the judge's finding that the complaint was not time barred as the Respondent had not complied with the 1999-2002 agreement since January 21, 2001 and the Union's charge was filed on July 9, 2001 and served on the Respondent July 11, 2001.

The Respondent excepted to the judge's remedial order that the Respondent "shall be ordered to revoke its withdrawal of recognition of the Union and instead to recognize and bargain with the Union." Finding merit in the Respondent's exception, the Board explained that when the 1999-2002 agreement expired on June 30, 2002, either party was free to repudiate the

relationship since the parties' bargaining relationship was governed by Section 8(f). Therefore, the remedial order was modified to omit any requirement of recognition or bargaining but to require the Respondent to fulfill its outstanding obligation under the 1999-2002 contract. To the extent that the Respondent's unlawful repudiation of the 1999-2002 agreement resulted in denial of employment or employees receiving less than they would have been entitled to for their work had the Act not been violated, the Board amended the remedy to provide for backpay formulas.

(Members Liebman, Schaumber, and Walsh participated.)

Charge filed by Teamsters Local 282; complaint alleged violation of Section 8(a)(1), (5), and 8(d). Hearing at Brooklyn on various dates between Jan. 16 and March 5, 2002. Adm. Law Judge Jesse Kleiman issued his decision July 2, 2002.

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Carroll & Carroll, Inc. (10-CA-34076; 340 NLRB No. 159) Savannah, GA Dec. 31, 2003. The Board agreed with the administrative law judge that the Respondent violated Section 8(a)(1) of the Act by threatening to discharge its employees, threatening its employees with plant closure because of their union activities, and interrogating its employees about Operating Engineers Local 474; and Section 8(a)(1) and (3) by discharging and failing to reinstate employee Waldo Floyd because of his union activities. [HTML] [PDF]

(Chairman Battista and Members Liebman and Schaumber participated.)

Charge filed by Operating Engineers Local 474; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Savannah on May 21, 2003. Adm. Law Judge Pargen Robertson issued his decision July 15, 2003.

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Desert Aggregates (32-CA-18653, 18726; 340 NLRB No. 170) Ducor, CA Dec. 31, 2003. The Board granted the General Counsel's October 17, 2003 motion for reconsideration of the Board's earlier decision reported at 340 NLRB No. 38 (2003). Contending that the Board's remedial language implicitly treated the Respondent's recall offers to Mark Gregg and Wendy Miller as valid offers sufficient to relieve the Respondent of any additional reinstatement and backpay obligations, the General Counsel requested that the Order be amended to provide the traditional remedy—full backpay until such time as the Respondent tenders valid offers of reinstatement. The Board agreed with the General Counsel and amended its remedy and order accordingly. [HTML] [PDF]

In the prior decision, the Board found, among others, that the Respondent violated Section 8(a)(3) and (1) of the Act by discriminatorily laying off Gregg and Miller. The Respondent was ordered to pay Gregg and Miller backpay from the dates of their unlawful layoffs until the dates of recall letters that the Respondent sent several months later.

(Chairman Battista and Members Liebman and Schaumber participated.)

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Enjo Contracting Co., Inc. d/b/a Enjo Architectural Millwork (29-CA-24260, 24370; 340 NLRB No. 162) Staten Island, NY Dec. 31, 2003. Chairman Battista and Member Schaumber agreed with the administrative law judge's finding that the Respondent violated Section 8(a)(3) and (1) of the Act by discharging Walter Clayton for his union activities and violated Section 8(a)(1) by telling its employees shortly after Clayton's discharge not to talk to Clayton in connection with his organizing efforts. Contrary to the judge, they found that the Respondent did not violate Section 8(a)(1) by threatening employees with layoffs or other unspecified reprisals if they supported New York District Council of Carpenters. [HTML] [PDF]

Dissenting in part, Member Liebman would find that Joseph Autovino, the Respondent's president, violated Section 8(a)(1) at his first meeting with employees by threatening the Respondent's employees with unspecified reprisals if they chose to be represented by the Union. In her view, the context of Autovino's remarks negates any attempt to portray as noncoercive his warning to employees to "think twice" about supporting the Union. She said that the Respondent's statement "suggested that unionization *would* have negative consequences for employees, regardless of other circumstances."

(Chairman Battista and Members Liebman and Schaumber participated.)

Charges filed by New York District Council of Carpenters; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Brooklyn, Oct. 16 and 17, 2001. Adm. Law Judge Jesse Kleiman issued his decision Jan. 15, 2002.

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Postal Workers Local 735 (United States Postal Service) (17-CB-5444-P, 5517-P; 340 NLRB No. 166) Wichita, KS Dec. 31, 2003. Chairman Battista and Member Walsh remanded this proceeding to the administrative law judge for appropriate action and for a supplemental decision on the issue of whether the Respondent violated Section 8(b)(1)(A) of the Act by excluding Teri Adelson from the settlement of the Respondent's underlying lost-work grievance, or by publishing a newsletter column by Dave Darrough, the Respondent's president, addressing the settlement of Adelson's unfair labor practice charge relating to the grievance. Member Liebman dissented. [HTML] [PDF]

This case arose from the Union's grievance alleging that an employee in another craft had been assigned work in the Respondent's bargaining unit jurisdiction. Adelson filed a charge, alleging that Union Steward Christine Pruitt excluded her from the settlement of the grievance because she was not a member of the Respondent. The charge was settled through a non-Board settlement agreement between the Respondent and Adelson that required the Respondent to post a notice and make an appropriate payment to Adelson. The Regional Director approved

Adelson's withdrawal of the charge and dismissed the complaint. The following month, Darrough, signatory on the posted notice, discussed the settlement of Adelson's charge in his column. Adelson filed a second charge. The Regional Director revoked his dismissal of the previous complaint and issued a consolidated complaint, alleging that the Respondent violated Section 8(b)(1)(A) by the actions of Pruitt and Darrough.

The judge determined that Darrough's column neither justified setting aside the settlement agreement nor violated Section 8(b)(1)(A), and that the General Counsel did not establish a postsettlement unfair labor practice or other grounds for setting aside the parties' settlement agreement. Therefore, the judge dismissed the complaint.

Unlike the judge, the Board majority agreed with the General Counsel's contention that the Respondent failed to comply with the non-Board settlement agreement by virtue of its comments in the newsletter article, which they found served to undermine the assurances in the notice that the Respondent would respect the rights of all unit employees.

In dissent, Member Liebman said that the Respondent has complied with the non-Board settlement: it paid the backpay agreed to, and posted the required notice. She found that despite its harsh words, Darrough's column was protected by Section 7 of the Act.

(Chairman Battista and Members Liebman and Walsh participated.)

Charges filed by Teri Adelson, an Individual; complaint alleged violation of Section 8(b)(1)(A). Hearing at Wichita on Oct. 11, 2001. Adm. Law Judge James L. Rose issued his decision Dec. 7, 2001.

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Royal Paper Stock Co., Inc. (9-RC-17605; 340 NLRB No. 164) Lima, OH Dec. 31, 2003. The hearing officer found, and Chairman Battista and Member Schaumber, with Member Liebman concurring, agreed that Joann Cornett was an eligible voter. Therefore, the Board adopted the hearing officer's recommendations to overrule the challenge to Cornett's ballot, directed that her ballot be opened and counted, and remanded the proceeding to the Regional Director for further appropriate action. The tally of ballots showed 2 for and 2 against, Teamsters Local 89, with 1 determinative challenged ballot. [HTML] [PDF]

In her concurring opinion, Member Liebman said she applied the bright-line rule reaffirmed in *Red Arrow Freight Lines*, 278 NLRB 965 (1986), in deciding this case. She noted that *Red Arrow* is based on case law 50 years old and there is no expiration date on that precedent.

(Chairman Battista and Members Liebman and Schaumber participated.)

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St. Francis Medical Center, Catholic HealthCare West, Southern California Region (21-CA-32642, et al.; 340 NLRB No. 168) Lynwood, CA Dec. 31, 2003. With the exception of one Section 8(a)(3) allegation, the Board affirmed the administrative law judge's findings that the Respondent committed numerous violations of Section 8(a)(1) and (3) of the Act. [HTML] [PDF]

The Board remanded the issue raised with respect to the judge's finding that the Respondent violated Section 8(a)(3) by counseling technical radiologist Carmen Bautista for giving a copy of the Union's employee survey to Ultrasound Technician Dominick Saati. It found that the judge did not specifically resolve the factual issue of whether Saati was with a patient when Bautista gave him the survey and/or whether Bautista disturbed Saati's delivery of patient care. The Board said that without a specific factual finding, it is unable to review the judge's ultimate determination under *Wright Line*, 251 NLRB 1083, enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982). The Board noted it was not necessary to reopen the record to resolve this issue on remand.

(Members Liebman, Schaumber, and Walsh participated.)

Charges filed by Service Employees Local 399; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Los Angeles on various dates between Oct. 12, 1999 and May 31, 2000. Adm. Law Judge Mary Miller Cracraft issued her decision Dec. 15, 2000.

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Unified Creative Programs, Inc. (2-CA-34420-1; 340 NLRB No. 160) White Plains, New Rochelle, and Rye Brook, NY Dec. 29, 2003. The Board adopted the administrative law judge's findings and dismissed the complaint allegations that the Respondent violated the Act by: (1) changing procedures by which employees callout; (2) changing the method by which oncall employees are scheduled; (3) changing job qualifications of unit employees by disqualifying employees if they are employed at United Cerebral Palsy of Westchester; (4) implementing a schedule for dinner breaks; and (5) eliminating the use of starting time grace periods. [HTML] [PDF]

The Respondent asserted that it did not give prior notice to UNITE about any of the alleged unilateral changes because it did not make any material changes and was not required to give notice. The judge found, with Board approval, that there were no significant changes in the rules or practices with respect to complaint allegations (1) and (2). In the judge's opinion, no credible evidence was shown that the Respondent made a rule or practice whereby it rejected job applicants who also held jobs at Cerebral Palsy of Westchester, and with respect to the issues concerning dinner breaks and the elimination of starting time grace period, the judge said that the posting of the dinner break schedules did not amount to a significant or material change in employee working conditions, and that there was no credible evidence that the Employer has or that it had a policy of allowing employees a 10-minute grace period.

(Chairman Battista and Members Liebman and Schaumber participated.)

Charge filed by UNITE. Hearing at New York City on May 8, 2003. Adm. Law Judge Raymond P. Green issued his decision July 15, 2003.

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United International Investigative Services, Inc. (5-CA-29490; 340 NLRB No. 165) Baltimore, MD and Alexandria, VA Dec. 31, 2003. The Board, in the absence of a timely response to an Order Transferring Proceeding to the Board and Notice to Show Cause, granted the General Counsel's motion for summary judgment. According to the uncontroverted allegations in the motion, the Respondent failed to comply with an informal settlement agreement entered into by the Respondent and the Union and approved by the Regional Director on July 14, 2003, by failing to remit agreed-upon amounts due employees Susan McPherson and Alfonso Terrell. The Board ordered the Respondent to pay McPherson and Terrell backpay in the amounts set forth in settlement agreement. [HTML] [PDF]

(Chairman Battista and Members Liebman and Walsh participated.)

General Counsel filed motion for summary judgment Dec. 4, 2003.

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The Woods Quality Cabinetry Co. (6-RC-12194; 340 NLRB No. 163) Eighty Four, PA Dec. 31, 2003. Contrary to the Regional Director, Chairman Battista and Member Schaumber found merit in the Employer's contention that the erroneous designation of Greater Pennsylvania Regional District Council of Carpenters as affiliated with the AFL-CIO and the Region's failure to correct the designation warrant setting aside the election. Accordingly, the majority set aside the election and directed that a second election be conducted. The tally of ballots showed 31 votes for and 26 against, the Petitioner, with 3 challenged ballots, a number insufficient to affect the results of the election. [HTML] [PDF]

Dissenting, Member Liebman stated that she would certify the results of the election. She noted that the error clearly was harmless under the circumstances here and that there is no evidence that voters cared about the affiliation issue in the slightest. She saw no basis for concluding that the mistaken designation of the Petitioner's parent union as an AFL-CIO affiliate interfered with employee free choice.

The Regional Director found that the Petitioner's affiliation was neither material to, nor an issue in, the campaign; that the Employer failed to meet its burden of establishing that employees were confused about the union for which they were voting; and that it was clear to employees that they were voting on whether they wanted to be represented by the Petitioner. The Regional Director reasoned it would be too confusing and too disruptive of the election process to change only the ballot, which would then have been inconsistent with the notice of election.

(Chairman Battista and Members Liebman and Schaumber participated.)

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LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

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NO ANSWER TO COMPLAINT

(In the following cases, the Board granted the General Counsel's motion for summary judgment based on the Respondent's failure to file an answer to the complaint.)

Mucip, Inc./Tel Vilda Connections (an Individual) (2-CA-35408-1, 35424-1; 340 NLRB No. 158) New York, NY December 29, 2003. [HTML] [PDF]

Polychem Corp., et al. (Food & Commercial Workers Local 130) (4-CA-31082, et al.; 340 NLRB No. 167) Phoenixville, PA December 31, 2003. [HTML] [PDF]

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TEST OF CERTIFICATION

(In the following case, the Board granted the General Counsel's motion for summary judgment based on the ground that the Respondent has not raised any representation issue that is litigable in this unfair labor practice proceeding.)

Erie Brush & Manufacturing Corp. (Service Employees Local1) (13-CA-41318; 340 NLRB No. 169) Chicago, IL December 31, 2003. [HTML] [PDF]

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